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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SCOTT BRUMETT,

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Petitioner,

No. C 04-05423 JSW

11

v.

12

ANTHONY P. KANE,

ORDER TO SHOW CAUSE

13

Respondent.

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15 Scott Brumett (“Brumett”), a state prisoner, filed a petition for writ of habeas corpus
16 pursuant to 28 U.S.C. § 2254. Respondent has moved to dismiss the petition on several
17 grounds, including that Brumett has not exhausted his claims that (1) pursuant to the *Apprendi-*
18 *Blakely* doctrine, the Board of Parole Hearings (“Board”) is precluded from relying on facts of
19 the crime not found by a jury in making its parole determination, and (2) the Board violated
20 Brumett’s due process rights by breaching its contractual obligations.

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While the Court reserves ruling at this time on Respondent’s motion to dismiss, it
22 appears that Brumett may not have exhausted these claims in the California state courts. In the
23 event this Court finds Brumett failed to exhaust these claims, Brumett requests that the Court
24 stay his petition and hold it in abeyance while he returns to state court to exhaust. Under *Rhines*
25 *v. Weber*, 544 U.S. 269, 277-78 (2005), the stay and abeyance of a petition raising both
26 exhausted and unexhausted claims is appropriate when the district court determines: (1) “there
27 was good cause for petitioner’s failure to exhaust his claims in state court;” (2) the unexhausted
28 claims are not “plainly meritless;” and (3) reasonable time limits are placed on a petitioner’s

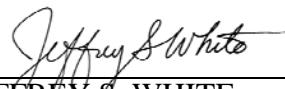
1 trip to state court and back." Although Brumett requests that his petition be stayed and held in
2 abeyance, he has not briefed whether such requested relief is appropriate under *Rhines*.
3 Accordingly, the Court Orders Brumett to Show Cause why his petition should be stayed and
4 held in abeyance.

5 Brumett is directed to file a response to this Order to Show Cause, which is not to
6 exceed five pages, by no later than July 31, 2006. Respondent shall have until August 7, 2006
7 to file a reply to Brumett response, if any, also not to exceed five pages.

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9 **IT IS SO ORDERED.**

10 Dated: July 24, 2006


11 JEFFREY S. WHITE
12 UNITED STATES DISTRICT JUDGE